CF0000058189

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal appeal No. 685 of 1995.

APPELLANT: (IN JAIL) Budha Ram Dhanuhar, aged about 35 years, S/o Parshuram Dhanuhar, R/o Vill. Khairwana Police Station-Manendragarh, Distt. Sarguja, M.P.
At Present:- Central Jail, Raipur.

VERSUS

RESPONDENT: The State of Madhya Pradesh

MEMORANDUM OF CRIMINAL APPEAL UNDER SECTION 374(ii) OF THE CODE OF CRIMINAL PROCEDURE, 1973.

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आदेश पत्रक

(10)

मामला क्रमांक CRA NO 685 / 95 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

13-12-2005

Shri Sachin Singh Rajput, counsel for the appellant.

Shri G.K. Beriwal, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment.

By this appeal, the accused/appellant has questioned the legality of the judgment of conviction and sentence dated 11-3-95 passed by the Additional Sessions Judge, Manendragarh District: Surguja in S.T. No.143/94 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of murder of his wife namely Phaguni Bai, sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on the fateful day accused Budhram, his wife Phaguni Bai (since deceased), PW-1 Santu son of Bidur and PW-2 Santu, son of Sukhlal, brother of the deceased, went to the market of Manendragarh for selling vegetables. In the evening, when they were returning, the accused/appellant was carrying an axe in his hand. When they reached near the village Banji Ghotupathara, the accused/appellant, all of a sudden, assaulted his wife namely Phaguni on her neck with the said axe which he was carrying in his hand. When he tried to escape from the scene of occurrence, the above eyewitnesses i.e. PW-1 Santu son of Bidur and PW-2 Santu, son of Sukhlal caught him. On the next day, Santu went to the Police Station Podi for lodging the report. On receiving the report Assistant Sub Inspector S. N. Tripathi (PW-6) registered the Crime No.0/93 under

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Section 302 of the I.P.C.. Thereafter, the matter was transferred to the Police Station Podi in whose jurisdiction the crime was said to have been committed. PW-7 Maheshwar Singh received the information Ex.-P/6 at about 7 p.m. and he went to the scene of occurrence. After summoning the witnesses under Ex.-P/9, prepared the Panchanama (Ex.-P/2) of the dead body of Phaguni Bai and sent the dead body of Phaguni Bai for postmortem to the Primary Health Centre, Manendragarh under Ex.-P/10. The weapon of offence i.e. axe which was lying near the body, broken pieces of bangles of the deceased, blood stained soil and the plain soil were also taken into possession under Ex.-P/3. The blood stained Sando baniyan of the accused was taken into possession under Ex.-P/11. The clothes of the deceased were taken into possession under Ex.-P/12. The site plan Ex.-P/13 was prepared by him. The postmortem of the dead body was conducted by PW-4 Dr. Rajendra Singh Bhojak and he prepared the report Ex.-P/1.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Manendragarh who in turn committed the case to the Sessions Judge, Surguja, Ambikapur from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to prove the charge against the accused/ appellant examined 7 witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of the accused under Section 313 of the Cr.P.C. in which he denied his involvement in the crime and stated that the evidence of the prosecution is not correct. He has been falsely implicated in the crime and the witnesses are liar. Learned Additional Sessions Judge after hearing the arguments and perusal of the records,

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convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard Shri Sachin Singh Rajput, learned counsel for the accused/appellant and Shri G.K. Beriwal, Additional Public Prosecutor with Shri Akhil Mishra, learned Panel Lawyer for the State/respondent.

The fact of death of Phaguni Bai as homicidal in nature has not been disputed by learned counsel for the accused/appellant. Apart from that, from the evidence of PW-4 Dr. Rajendra Singh Bhojak, PW-1 Santu son of Bidur and PW-2 Santu, son of Sukhlal, it is established that the death of Phaguni Bai was homicidal in nature.

Now, coming to the question of involvement of the accused/appellant in the crime in question, Shri Sachin Singh Rajput, learned counsel for the accused/appellant, in the first instance, argued that the evidence of so called eyewitnesses PW-1 Santu son of Bidur and PW-2 Santu, son of Sukhlal is not worth reliable. They had not witnessed the crime because each of the witnesses in his cross-examination has clearly stated that he has not seen the accused attacking the deceased. He further argued that the distance of the Police Station from the place of occurrence was about 32 km and the incident took place on 13-8-93 at 6 p.m. and the matter was reported on the next day at about 3.20 p.m., therefore, the delay has not been explained. The evidence of the witnesses to the effect that they caught hold of the accused at the scene of occurrence is also not correct.

We have perused the evidence of these two eyewitnesses namely PW-1 Santu son of Bidur and PW-2 Santu, son of Sukhlal. PW-1 Santu has stated that deceased Phaguni Bai was his sister. She was married to the accused/appellant. On the date of the incident he along with his other friend

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Santu S/o Sukhlal, the deceased and the accused went to the market of Manendragarh. At about 6 p.m. they were returning, when they reached near Ghotupathara, the accused attacked his sister Phaguni with the axe on her neck and murdered her. After attacking, when he tried to run away, he along with Santu caught the accused and they took him to the Police Station. He has further stated that when the accused was trying to run away, they had beaten him also. They were watching the body whole night. They went to the Kotwar along with the accused and thereafter they went to the P.S., Manendragarh next day because the same day i.e. on the day of the incident, after the incident, night set in. In para-9 of his evidence he has stated that he had not witnessed the crime with his own eyes. He saw his sister in the lying position on the road because the accused started running carrying an axe in his hand and he caught him. At that time, there was no much dark and things were visible at some distance. Similar is the evidence of PW-2 Santu son of Sukhlal.

For appreciating the arguments advanced by learned counsel for the accused/appellant, in the cross-examination of these two witnesses, they have stated that they had not witnessed the crime with their own eyes. It would be relevant to refer the evidence of PW-3 Rai Singh, resident of village Banji. He has stated that in the night of the incident the accused came to his house in an injured condition and disclosed him that he has committed murder of his wife that is why he has received the injuries because his brother-in-law assaulted him. On account of the injuries he became suspicious that the accused may die, therefore, he went to the neighbourers and the neighbourers sent him to the Kotwar. Thereafter, Kotwar came to his house. When he returned to his house, the accused was not available in his

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house. When he enquired from his family members, they said that brother-in-laws of the accused i.e. PW-1 Santu son of Bidur and PW-2 Santu, son of Sukhlal came and took him to the Patel's house. When he went to the house of Patel, he saw that the accused was present in the house of Patel along with brother-in-law and thereafter watch was kept on the body. In the cross-examination, this witness has stated that when the accused came to his house, he was not at his residence. His children informed that one person in an injured condition has entered the house. The accused was not known to him previously. The extra judicial confession made by the accused before PW-3 Rai Singh, who is an independent witness, and in the cross-examination of this witness, nothing has been brought on record to indicate that on account of any reason this witness was keeping any grudge against the accused or in any way, he was interested in PW-1 Santu son of Bidur and PW-2 Santu, son of Sukhlal. The evidence of this witness is natural. He has very clearly stated that the accused came in an injured condition to his house when he was not at his residence. When he came and enquired from the accused that how he has received the injuries, then he disclosed that he has received the injuries on account of beating given by his brother-in-laws because he has committed murder of his wife. It has come in the evidence of PW-1 Santu son of Bidur and PW-2 Santu, son of Sukhlal that when they went to inform in the village and the accused to remain near the body of the deceased, he ran away from that place. He came to the house of PW-3 from there PW-1 Santu son of Bidur and PW-2 Santu, son of Sukhlal again took him to the house of Patel, therefore, the accused came to the house of Rai Singh in order to save himself. During that process, on enquiry, he made extra judicial confession. It is settled law that the extra judicial confession

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

can be accepted only when it found to be voluntary and true. There is nothing in the evidence of this witness which shows that extra judicial confession made by the accused before this witness was not voluntary, as in the cross-examination, nothing has been brought to show that any coercion or pressure was exerted on this witness to make the extra judicial confession. As far as truthfulness of the extra judicial confession is concerned, this witness has stated that he went to the scene of occurrence and he saw the dead body of the deceased. The extra judicial confession made by the accused before this witness lends corroboration from the evidence of witnesses PW-1 Santu son of Bidur and PW-2 Santu, son of Sukhlal. Now, in this context, if we appreciate the evidence of the eyewitnesses i.e. PW-1 Santu son of Bidur and PW-2 Santu, son of Sukhlal, then much importance cannot be attached to their evidence to the effect that they had not seen the accused assaulting the deceased with an axe because in their evidence it has come that all of them went together to sell vegetables in the market of Manendragarh, all of them were returning together and the accused was carrying an axe in his hand, and all of a sudden, he assaulted with the said axe and the axe was also left at the scene of occurrence. He was trying to run away when he was caught by these witnesses. In the statement under Section 313 of the Cr.P.C. also he has not explained that said ghastly act was done by somebody else and he was not with these witnesses at the time of commission of crime. Moreover, nothing has been brought on record in cross-examination of these witnesses that these witnesses have any grudge against their own brother-in-law in order to implicate him in a false case that too in such a serious case of murder of his sister. Even the axe which the accused was carrying in his hand was lying

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near the body and the same was recovered under Ex.-P/3. The blood stained was also present on the axe when it was recovered. The memo Ex.-P/2 also shows that the axe was stained with blood, therefore, the evidence of these witnesses who were along with the accused at the time of the incident inspire confidence of the Court that they witnessed the crime in question.

As far as arguments advanced by learned counsel for the accused/appellant regarding the delay in lodging F.I.R. is concerned, the delay in this case is not fatal for the reason that the accused himself was caught red handed while committing the crime. The place of occurrence was about 32 km away from the Police Station as argued by learned counsel for the appellant and the crime in question was committed in the evening and the witnesses wanted to inform the Kotwar and by that time the night was already set in, then the villagers of the village Banji also came and the matter was reported next day. In the night, in the tribal area, vehicles are not easily available. Therefore, in the circumstances, we are of the considered opinion that the delay in lodging the report is not fatal. There is nothing on record which shows that same has been delayed for cooking up a false case against the accused/appellant.

In view of the above, finding of the trial Court convicting the accused for commission of murder of Phaguni Bai based on the extra judicial confession made before PW-3 and also relying upon the evidence of PW-1 Santu son of Bidur and PW-2 Santu, son of Sukhlal does not require any interference by this Court.

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In the result, we do not find any substance in this appeal. The appeal is, therefore, liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K.Shrivastava
Judge

19/12/05